

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

DR. NAVIN BAROT,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Cause NO. 1:14-cv-15-HSO-RHW
	§	
R.F. LAFFERTY & CO., INC., APEX	§	
CLEARING CORPORATION f/k/a	§	
RIDGE CLEARING & OUTSOURCING	§	
SOLUTIONS, INC., TODD SHERMAN,	§	
and JOHN DOES 1-5,	§	
	§	
Defendants	§	

PLAINTIFF'S RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL ARBITRATION

COMES NOW Plaintiff, Navin Barot (hereinafter “Barot”), by and through counsel, and for his Response in Opposition to Defendants R.F. Lafferty & Co., Inc. and Todd Sherman’s Motion to Compel Arbitration [Doc. 13] would show as follows:

On January 14, 2014, Barot initiated this action by filing a Complaint against R.F. Lafferty and Co. (“Lafferty”), Todd Sherman (“Sherman”), and Apex Cleaning Corporation (“Apex”) asserting the following eleven claims: Breach of Fiduciary Duty/Constructive Fraud; Accounting; Violation of SEC Rule 10b-5; Fraud/Misrepresentation; Negligence; Breach of Contract; Breach of Duty of Good Faith and Fair Dealing; Churning; Conversion/Embezzlement; Conspiracy; and Intentional/Negligent Infliction of Emotional Distress. [Doc. 1, Paragraphs 18-57]. On March 10, 2014, Apex filed its Answer to Plaintiff’s Complaint. [Doc. 6]. In its Answer, Apex failed to plead the defense of Arbitration as an affirmative defense. *Id.* Lafferty and Sherman have not answered.

On May 13, 2014, Lafferty and Sherman filed the instant Motion to Compel Arbitration citing a purported arbitration agreement buried in the fine print of Barot's new account application with Lafferty. However, this application utilized by Lafferty was a form agreement which was not subject to negotiation. Such "take-it-or-leave-it" documents are without question adhesionary contracts. Barot's specific agreement contains unconscionable provisions which are extremely unfair and unduly harsh, including Lafferty's unilateral right to alter the agreement (allowing Lafferty to change the terms of the arbitration provisions) and the lack of mutuality (allowing the company to pursue an action in Court as it was only Barot who is obligated to arbitrate). The one-sidedness and inherent unfairness of these provisions so permeate the arbitration provisions at issue that the entire arbitration clause must be stricken and rendered unenforceable.

This Court should deny Lafferty and Sherman's Motion [Doc. 13] and rule in favor of Plaintiff Barot for the following reasons:

- a) Because of the unfair and unduly harsh terms contained in the agreement, the arbitration provision is substantively unconscionable and must not be enforced;
- b) Because Apex failed to plead the affirmative defense of arbitration, Apex has waived any alleged right to arbitrate and, as Lafferty's agent, this waiver is imputed to Lafferty.

WHEREFORE, PREMISES CONSIDERED, and for the reasons set forth above and in Plaintiff's Memorandum filed contemporaneously herewith, Plaintiff Navin Barot respectfully requests that this Court enter an Order denying Defendants R.F. Lafferty & Co., Inc. and Todd Sherman's Motion to Compel Arbitration.

Respectfully submitted, this the 10th day of June, 2014.

NAVIN BAROT, PLAINTIFF

By: /s/ P. Manion Anderson
P. MANION ANDERSON, ESQ.
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CERTIFICATE OF SERVICE

I, P. Manion Anderson, do hereby certify that I electronically filed the foregoing with the Clerk of court using the CM/ECF system, which will send notification of such filing to all counsel of record.

THIS the 10th day of June, 2014.

/s/ P. Manion Anderson

P. MANION ANDERSON, ESQ.

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